

An Impartial Disquisition, how far CONQUEST gives the Conqueror a TITLE.

CHAP. I.

Conquest is no sufficient Title to Rule; for then all Conquerors are lawful Princes; but they are not, for

1. Justice only gives right, and the rule of justice is *summum cuique*, we are commanded. Rom. 13. 7. to Render to all their dues; but here in the Case of Conquest right is pretended to that, which is anothers, only by taking it from him; and so Justice founded upon Injustice.

2. Right continues, as long as the Cause remains, and force cannot reach that, for it cannot destroy the gift and donation of God, nor bring to pass, that a Father shall be no Father, or an Heir no Heir, or one Lawfully chosen not chosen.

3. If Conquest be a sufficient title, then there never was an Usurper in the world; for, till he prevails, he is but an Attempter, and as soon as he prevails, he is a Lawful Prince.

4. Then it would not only be Lawful for the Usurper to withhold anothers Right, but unlawful for the wronged King, or his friends to seek the recovery of his own, which is contrary to what * David did in the case of Absalom, and || Joash

* 2 Sam. 18. 1. in the case of Absalom, and || Joash || 2 Kings 11. in the case of Athaliah.

5. If Conquest gives a title, then a strong Thief hath right to all he takes away by violence; or else God hath left every private man in better condition than his own Deputies*, since force

* See Dent. can take away the Royalty of these, but not the property of those.
I. 17.

6. If Conquest give a sufficient title, then that devilish Maxim is true, *Prosperum scilicet virtus est, that wickedness crowned with*

prosperity commences virtue; and there is no difference between good and evil, but event. A Rebel falls, and is a Traytor; he prospers and is a lawful Prince; which pricks up apace towards Atheism.

7. This proclaims liberty to all ambitious, and covetous persons to embroyl the world, if whatever they can get is their own. Certainly God, who loves mankind, and delights in order, peace and righteousness, never made this Law.

CHAP. II.

GOD's word allows not of any title by Conquest, for

1. It forbids all violence, rapine and wrong, nay, so much as coveting that which is anothers, commands all to be content with their own, requires restitution of what is wrongfully taken away. Nor must we say with * Caesar, *Si jus violandum est, regnandi causa violandum est*; if right and equity be to be trampled on at any time, it is, when a Crown is to be acquired. * Apud Sueton. Sect. 30.

2. What is said, John 10. 1. *He that enters not in by the door into the sheepfold, but climbs up some other way, he same is a thief and a robber*, is universally true of all Governments; Kings are * Shepherds too, and the same common rule of justice holds in the Shepherd's title to his Flock, and so every where both in Church and State. * Conf. Psal. 78. 71. Isai. 44. 28.

3. It is said, Rom. 13. 1. *The powers that are* &c. the word is, *ai Exusiai*, not *Swadion*, (now *Exusia* signifies only lawful, and just power,

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From the
Andrew Peterson Peabody fund

Reader,

This is an abstract of a
Treatise written by Mr.
Gheft, a learned and pious
Suffolk Divine, when the Usurpers
over Charles the Martyr pre-
tended a Title by Conquest.

power, while *δύναμις* signifies the power of an Usurper) so that we must be subject to him, who hath the right and authority to rule, even tho' devested by the force of an Usurper. Such powers are said *Vers. 2.* to be the ordinance of God, *δυστάσις*, which signifies an *Edict*, or a *Law*, so that no Usurper is God's ordinance, unless he can show either some particular Charter from God, or some general Law in favour of Usurpers. --- Again, in the same Verse it is said, *they that resist, shall receive to themselves damnation*; not a right, or title to the supreme power; that would make the Law both partial, and useless, restraining none, but those, whom Princes might restrain without it. --- Once more, in Verses 4, 5, 6. These powers are said to be God's Ministers, *Θεοῦ δούλοισι, ὡς ἀγγέλτοι*. Now none can enter into God's service, or Ministry, but by his leave, unless we think, that Usurpers may seize God's Commission too.

4. We are commanded * to
* *Mat. 22. 21.* render to Caesar the things that are Caesar's, *ἀποδοῦναι* here signifies to restore to the right owner, what is unjustly taken away, or detained from him, (so the word is used by the LXX. in the Old Testament) *Gen. 20. 7. 14. Levit. 5. 6. Num. 5. 7. Judg. 17. 3. 4. 1 Sam. 7. 14. & cap. 12. 3. 2 Sam. 3. 14. 1 Kings 20. 34. Nehem. 5. 12. Isai. 42. 22. Ezek. 33. 15.* and so in the New Testament also, *Matth. 5. 26. chap. 18. 25, 26, 28, 29, 30, 34. Luk. 19. 8.* So that it binds not only to the payment of all dues to the owner, that accrue to him, while the possession is undisturb'd, but to restitution also, of what he is unjustly deprived of.

5. Christ's actions are our instructions. Now, when one would have put our Lord upon the doing an act of power, *Luk. 12. 14.* He answers, *Man, who made me a Judge, &c.* It seems, a Governor must be duly made, or set in the place, he cannot set himself there; it is above the pitch of a Creature to create his own power by his own force, it must be

derived from another; nor can every one's appointment give a title, but his only, who hath right to appoint: 'tis not, *Has any one?* but, *Who hath appointed me?*

6. Men of all sorts, and of all sides (just, and unjust, Plaintiffs, and Defendants) have taken this for granted, that force, and conquest gives no * title.
* See 1 *King. 20. 34. Judg. 11. 13, 15, 21.*

7. God himself hath given sentence in the case. Nimrod was the first Usurper, he got all by might; גִּבּוֹר Gibbor, as he is called, *Gen. 10. 8.* yet a double brand there is upon him, *Vers. 9.* that he was, 1. a mighty Hunter; till men turn into beasts, a mighty Hunter will not be turn'd into a lawful King. And then, 2. לִפְנֵי יְהוָה Lipne Jehovah, *ἑναντίον Κυρίου* against the Lord, so it should be translated; for 'tis evident, that 'tis spoken to his Infamy. --- God expressly forbids the Israelites to invade the Edomites, the Moabites, or the Ammonites, *Deut. 2. 4, 5, 9, 19.* the precepts are particular, but the reason is universal, and holds against all invasions of the rights of others, (because God gave them their lands for a possession) and as to the Ammonites, who long after invaded, and conquer'd part of the holy Land, Thus saith the Lord; *Jerem. 49. 1.* hath Israel no sons? hath he no heir? why then doth their King inherit Gad, and his people dwell in his Cities? as if he should say, "Tho' the King of Ammon hath gotten possession by the Sword, yet the right remains still to the heir, though dispossest: 'tis therefore that such Conquerors are compared || to Lyons, *Nahum. 2. 12, 13.* that tear in pieces, and fill their holes with prey, and their dens with rapine; and, behold, saith the Lord of Hosts, I am against you, my sword shall devour the Lyons, and I will cut off the prey from the earth. 'Tis therefore also, that the * Chaldeans, who possess the dwelling places, that are not theirs, that keep not at home, that enlarge their desires as Hell;

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Hell, and as death, and cannot be satisfied, that gather to them all nations,
 Hab. 2. 5, 6. *and heap to them all people, have heavy judgments denounced against them, Woe to him, that increaseth that, which is not his, how long? &c.*
 See also, *Jerem. 51. 35, 36. Ezek. 35. 10, 11. & chap. 36. 5. & Amos 1. 13.* in all which places sore punishments are denounc'd against Usurpers; and it were absurd to say, that the divine Justice would punish any for using that, which is the direct, and immediate way to get a good Title.

CHAP. III.

Conquest proves not a right by God's donation immediate. Some men pretend, that God by the Event of the War, giving victory, gives right withal to the Conqueror, and for this they have two Colours. The first Argument is deduc'd from Reason; Providence governs all, therefore this victory, and so 'tis God's Will. To which I Answer. It seems the *Alcoran* hath not been English'd for nothing; with the *Mahometans* indeed all is their own fish that comes into the net: but if every attempt crowned with success, proves, that God gives a right, then he, who destroys the true Religion, and sets up a false; he, who kills, ravishes, robs, hath right on his side; 'tis *par casus*, unless they shew, that Event shewes God's Will in one thing more than another, which it does not, since all comes alike to pass by God's Providence: Should it be objected, that this Assertion must be restrain'd to Kingdoms, because War between those, who have no superiour on earth to judge them, is an appeal to God to determine the right: I Answer, 1. Then this extends not to Subjects, who have a King to judge them. 2. If it be meant of all those, who acknowledge, or pretend to have no Superiours, then all wicked men may make use of it; since 'tis but to pretend, and then appeal to God, and, if they prevail,

God, it seems, gave them leave. 3. 'Tis to throw God's Law (the rule of right, and wrong) behind us, and to tempt him to give a particular sentence; against *Matth. 4. 7. Thou shalt not tempt the Lord thy God.* 4. How knows the Objector, that every King, who fights for his own, makes such an ungodly appeal? 5. Suppose both parties are so presumptuous, how knows he, that God is bound to listen to every presumptuous Appellant, and give judgment at his beck? The Truth is, Event shews no more; but that God permits it, because he can work good out of it, and fulfil his own wise, and just, tho' hidden counsel; but to say, he approves whatever he permits, is blasphemy.

2. The second colour is from Scripture, *Dan. 4. 17, 25, 32. The most high ruleth in the Kingdom of men, and giveth it to whomsoever he will.* To this I Answer,

1. If you mean this of God's gift of right to rule, 'tis not said, he giveth it to every one, who is in possession, but to whom he pleaseth. 2. If you mean it of possession (and so it is to be understood, as it appears from *vers. 25.* and the whole Context) it follows not, God gives possession to whom he will, therefore he gives right; whenever he gives possession; the scope of all was to cure *Nebuchadnezzar's* pride, and to shew him, that whosoever possesseth a Kingdom, doth it by a Providence which can dispossess him. Indeed no one possesses a Kingdom without some gift from God, but 'tis often only permissive; it creates no right. Thus * *Saul* in the * *I Sam. 24.* Cave was by God delivered *10. c. 26. 23.* into *David's* hand, and Christ was || delivered by the determine counsel of God; had *David* hereby a right to kill *Saul*, or the Jews a right to kill Christ? Nay, tho' *Nebuchadnezzar* was out of possession (*Dan. 4. 25. They shall drive thee from among men*) Yet still 'tis his Kingdom, and his Counsellors, and his Lords, *ver. 26. 36.* His right it seems remained.

CHAP. IV.

Conquest in a just war gives no just title:

A just War is that, which is made by a Sovereign Prince for a just cause: while both conditions are wanting in our Case; but suppose they were not, if such a Conquest gives title, 'tis 1. either by extraordinary Donation, and that none, I think, can now pretend to. Or, 2. By the Law of Nations. But 1. that Law, according to those who alledge it, gives only an external shew of Justice, true internal justice obliging at the same time

to restitution, of which restitution, See * *Grotius* proving it to be the opinion of *Jews*, and *Mahometans* as well as *Christians*, and that the Holy Scripture, *Isai.* 58. 6. avers, that those mens faults are not acceptable to God, qui non jure captos detinebant, *who do not let the oppressed go free*, and *who* (*Jon.* 3. 8.) *do not turn from the violence, that is in their hands.*

* *Grot. de jure belli, & pacis, l. 3. c. 6. Sect. 1. Fure Nature quidem bello iusto ea nobis acquiruntur, quæ aut paria sunt ei, quod: cum nobis sit debitum, aliter consequi non possumus, aut etiam quæ nocenti damnum inferunt intra æquum pœne modum.*— conf. *S. S. 2, 3, &c. & cap. 10. S. 3.*

2. Shew us this Law of Nations, where is it, or how is it morally possible, that all Nations should meet to give it: if you interpret common practise to be the consent of all, I presume, the dispossessed do not consent, and the rest are either gainers, or unconcerned.

3. The Law of Nature gives not this right, for then it must be either by way of reparation of the wrong, or punishment of the fault; the first allows no more than an equal recompence for the injury, and leaves the rest to the enemy still; the second supposes Authority, for who hath power to punish, must have power to examine, and to judge the merits of the cause; but a Superiour to the Supreme implies a contradiction; *Par in parem non habet imperium*; equals have no authority one over

another; * *who art thou, that judgest another man's servant?* * *Rom.* 14. 4. *|| what have I to do to judge || 1 Cor.* 5. 12. *them, that are without?* are most sure maxims of the Law of Nature.

4. The Law of Scripture gives no such right. *Deut.* 20. 10, 15. There is a rule given, how the *Israelites* were to deal with all Nations (except the seven, which were given up to utter ruine) and the case is double; if they will treat take Tribute of them; if they will fight it out, and you Conquer, take the Spoil, but in neither case a title to the Government.

Tribute may be given, and service may be done by one King to another (as appears from *Gen.* 14. 4, 8, 9. 2 *Sam.* 10. 19. 2 *Kings* 3. 4. & *ch.* 18. 7, 14.) and yet those who pay the Tribute, and do the service be Kings still, as appears by the above-cited places; so then the Conqueror may exact tribute sufficient to make amendment for the injury; but whatever be meant by Tribute, or Service, the Conqueror acquires no title by Conquest but by the consent of the Conquered to the Articles of peace, of which in the next conclusion.

CHAP. V.

Qu. *W*hether the consent of the people conquered, and their submission to the Conqueror gives him a title?

Ans. It is a kind of destiny upon people, that their name is used, their benefit pretended, their power to create right to govern magnified, and all to their hurt, *Isai.* 3. 12. *O my people they which lead thee, cause thee to err*; and so again, *ch.* 9. 16. in the *Septuagint* it is *ai maxai eorles*, and so in the *Hebrew*, and in the margin of our Translation, *they which call thee blessed*, and undertake to make thee so. People are never in greater danger, than when they listen to these same (*Benificantes*) men, who promise to make them blessed, so it hath been here, and after the misery that is come upon us, the peoples consent is pretended.

To show what really the people hath to do in the giving title, or right to Government, we will consider in general the means of acquiring dominion; ----- All power is from God, we take that for granted, therefore whoever hath a title, must show some manifestation of God's will for it; now this in the case of Governors must be either by extraordinary supernatural designation, as in *Moses, Joshua, the Judges, Saul, David, Jehu*, &c. or by a general Law, that may hold in all ordinary cases; (for as to event, that manifests only God's permission, not his gift, as I shew'd before) as for the first of these, it was good, where it could be shown, which now it cannot: The second cannot be any humane Law; for tho' just Laws are in their kind, and degree significations of God's will, who will have us obey his Deputies for conscience sake, yet in giving title to supreme power they have no place. For 1. National laws presuppose it, and are made by it. 2. The law of Nations is either the same with the law of Nature, which is God's law, binding all Nations, or if it be taken for a humane law, enacting that, which the law of nature hath left at liberty, 'tis a meer empty name, for there is no humane supreme power, to which all Nations are subject, that should enact such a law. *Jus gentium* indeed, or right of Nations there is, but no *Lex gentium*; one Nation may have right against another, either by the law of Nature alone, or by mutual Pacts, which bind by vertue of the law of Nature, which obliges all to perform their covenants.

So then none can claim right to Government, but by the Laws of God, and they are two-fold, of Nature, and Scripture, but both to be used here promiscuously; the rule of both is, Honour thy Father and thy Mother, which subjects the children to both Parents, but first to the Father, as supreme; no place is left here for popular election, it being impossible, that children should choose their father, who are in subjection as soon as they

are, and to govern whom the Father hath a natural capacity, even before he hath them.

In this Paternal right is founded the government of whole Nations, as appears from *Genes. 10. 5, 20, 31, 32.* where it is often observed, * that by those three sons of Noah were the nations divided in the earth after their families, and generations, which confutes the common dream, that Nations were constituted by collection of several Families into one Mass, (like *Epicurus's* world out of Atomes) for the Scripture makes it clear to have been quite contrary, by spreading one root into many branches, (see *Acts 17. 26.*) and this will be easily believed, when it is considered ||, how long they lived in that Age (six hundred, four hundred, all even to *Nahor*, above two hundred years) and that * in four generations from *Levi* to *Moses* Seventy || men were multiplied to six hundred thousand, that were men *, besides children, and you will see, that one of those Fathers might live to be by his meer Paternal power King of a populous Nation.

Nor did those Kingdoms upon the Father's death cantonize after the number of his Sons, the Elder brother was Heir of his Father's power, and governed the Families of his brethren also: So *Genes. 4. 7.* God saith to *Cain*, subject to thee shall be his desire (sc. thy brother's) and thou shalt rule over him: Hence *Isaac* in blessing, as he thought, his first-born, *Gen. 27. 29.* saith, be Lord over thy brethren, and let thy mother's sons bow down to thee. And so *Jacob* also in blessing *Judah*, (who inherited the regal power) *Gen. 49. 8.* expresses himself: nay, even our Saviour's kingdom over his brethren (that is, the members of the Christian Church) is often put upon

* Vid. *Joseph. Antiq. lib. 1. cap. 7.*

|| Conf. *Gen. 11.*

* *Exod. 6. 16, 18, 20.*

|| *Gen. 46. 27.*

* *Exod. 12. 37.*

* Rom. 8. 29. upon this title of *primogeni-*
ture, as being * *the first-born*
 Col. 1. 15. 18. *among many brethren*; so then
 Hebr. 1. 6. the people have no more to
 Revel. 1. 5. do to make a King, than a child to make his
 father; God the sole giver of life disposes of
 what Parents every one shall be born, who
 shall be heirs of Kings, and whom they shall
 inherit for their subjects; for the word *Inhe-*
ritance is in Scripture language ||
 || Psal. 16. 5. *καληνοουλα*. that is, *a lot*, and the
 Colos. 1. 12. whole *disposing* (judgment, or
 Act. 26. 18. right) of *that is from the Lord*:
 Prov. 16. 33. The people have no part in it,
 so that if they presume to give this inheri-
 tance to another, let them take heed of that
 * Isai. 45. 9, 10. woe *. *Woe be to him, who stri-*
veteth with his maker, &c. and
Woe be to him, who saith to his father, what be-
gettest thou? &c. namely, while they have one
 of God's appointment; for when he hath left
 them destitute, then they may interpose, and
 elect, but let them not be fond of wanting
 one, that they may please themselves in choo-
 sing, for they cannot be damn'd to a worse
 condition in this world, than to be without a
 King. As it is threatned, *Hosea 10. 3. They*
shall say, we have no King, because we feared
not the Lord. Numb. 27. 17. *That the congre-*
gation of the Lord shall be as sheep, that have no
shepherd || : and *Isai. 3. 5, 6, 7.*
 || Vid. Lam 5. 3. *The people shall be oppressed eve-*
ry one by his neighbour, and then follows the
 people's part in choosing a King; *a man shall*
take hold of his brother, saying, be thou our Ru-
der: Now, when people come to choose, if
 they will put the power into the hands of
 many, (too many to keep counsel, or agree tip-
 on action) and so serve many Masters at once,
 if they will choose for a head the beast of ma-
 ny heads; that monstrous form of Polity,
 where the whole body is all head, and every
 single limb the body; where all are sons of the
 people, all are father, and every one a son; be
 ruled by the many, that can believe any thing,
 and judge of nothing; that have the wit of a

child, and the fury of a Giant, the filliness of
 an Innocent, and the rage of a Tyrant; be
 governed by most voices, who are sure to
 choose the worst, since there are more fools,
 and knaves, than wise and virtuous; or if
 they will be ruled by a Senate, and for fear
 of one Tyrant (whom death will end) sub-
 mit to four hundred, that for one head lopt
 off will supply two, and make slavery immor-
 tal; or if they do see Monarchy the best, and
 yet will mix it with some trick of their own
 to spoil it (as by making it elective, &c.) tho'
 these forms of popular contrivance be but de-
 generations of that paternal power in one,
 (which is always chosen, when God chooses
 for us, as best suiting with his universal Mo-
 narchy) yet when the choice is left to the
 people, 'tis valid, as well as that, which a foo-
 lish woman makes of a bad husband.

Thus much of the means of acquiring su-
 preme power; now, how far the people's
 submission can operate towards the making
 the Conqueror's title good.

1. While they have a King of God's pro-
 viding by paternal right, they have nothing
 to do either to confer, or transfer that right.
 2. Tho', when the people have chosen a po-
 pular government, and are lawfully settled
 under it, their submission (perhaps) to the
 Conqueror may transfer a right (because then
 they are in two capacities, being both Sove-
 reigns and Subjects, so that their submission
 includes the consent of all that are interest'd)
 yet in other forms of Government, where the
 people are meer subjects, the supreme power
 is not theirs to give, they cannot give away
 what is another man's, much less what is
 God's, and by his immediate gift confer'd on
 the lawful King. 3. When people are de-
 stitute of a Government, and choose one, the
 King chosen holds not his power from them,
 but immediately from God; their choice, 1.
 proves not, that the King derives his power
 from them; the wife chooses her husband.
 and the Parish the Constable, yet the first
 hath his power from God, the other from the
 King;

King; and therefore the power not being derived from the people, they cannot resume or transpose it, any more than the wife, &c. 2. The people's choice hinders not the King's receiving his power immediately from God, tho' their choice be an instrumental act, by means whereof God's power is conveyed to the King's person which is chosen, yet it argues not, that God first invests the people with the supreme power, and seats it inseparably in them, and that then they derive it to the King in subordination to themselves, as the King doth to an inferior Magistrate: only when they want a Father by Inheritance, they choose and make an Adoptive one, who derives not his power from them, but immediately from God by that Law of Nature, which gives the father power over his children.

Obj. But how is this immediately from the Law of Nature, when there comes a voluntary act of man between?

Ans. That voluntary Act of the people is not done by virtue of any supreme power feated in the people, but by allowance of the Law of Nature, which, as other laws, contains in it concessions, as well as precepts.

1. It teacheth, that power to rule is necessary for the preserving of mankind, which cannot subsist but in society, nor that without order and government. 2. It allows us to provide necessities by any means, that may be used without impiety against God, or injury to man, and therefore to appoint themselves a King, when they are destitute. 3. It commands them to be subject to the King thus chosen; so that from first to last this power is founded immediately on the law of Nature; now not only this, but almost all the laws of Nature suppose a voluntary act of men to constitute the matter of their precepts and prohibitions, & yet bind merely by their own force. Prayer, oaths, dedications of holy things, all external acts of religion suppose acts of men to give words their signification, to administer and take the oaths, to dedicate the holy things, but yet the precepts commanding the duties,

and forbidding the abuse; bind immediately without any help from humane authority. So theft supposeth propriety of goods, adultery supposeth marriage, &c. but yet the commandments, that prohibit those sins bind expressly by virtue of the Divine authority.

CHAP. VI.

Qu. **W**hither Kings, &c. can deprive themselves of supreme power, or give it from the right heirs?

Ans. Here three questions arise, one touching resignation, whither a King can give up his power? and two concerning succession, whither a King can invert the natural order, and disinherit his lawful heir, and whither he can give a stranger right to succeed by adopting him. In deciding these three questions, there is great diversity both of precedents, & humane laws, but 'tis not material, since only divine laws can regulate such translations. If God hath given Kings power to dispose of their Kingdoms at pleasure, they have no Superior upon earth, that can take it from them; if not, they can neither create it themselves (for there is no power, but by the gift of a Superior, *Joh. 19. 11.*) much less can their subjects, being inferiors, give it them.

Therefore for the resolution of this question, distinguish, 1. Between the effect such an act of a King may have upon himself, or upon others, for tho' he may divest himself of his Regalities, it follows not that he can deprive his heir of his title, or give it away to another. 2. As to his divesting himself, distinguish between the lawfulness of the act, and the validity of it; it may be, *Fieri non debuit factum valet, what ought not in justice to have been done, is notwithstanding valid, when 'tis done.* * *Esa*u lost his birth-right by selling it, yet sinn'd in doing it, *sc.* by undervaluing the power which God had given him, and whatever damage did hereby accrue to *Esa*u's posterity, was from God's immediate designation, not from any power in *Esa*u. 3. Distinguish of Kings; those, whose Progeny

* Compare
Gen. 25. 33, 34.
with *Heb. 12. 16.*

was

was in their lifetime multiplied into a Nation, could not develt themselves, because they could not cease to be Fathers of their children, who by the law of Nature are subject to them; but an hereditary King may relinquish his title, as well as any other Inheritance, *Psal. 106. 40. He abhorred his own Inheritance: Jer. 12. 7. I have forsaken mine house, I have left mine heritage. Shepherds of men may break their staves, and cast off their flocks, Zech. 11. 10, 11.*

But notwithstanding all this an hereditary King cannot deprive his Heir, if he have one, nor hinder the peoples choice, if he have no Heir.

1. He cannot develt his Heir, for God designs him by making him first-born, or next of blood, nor can the father alter his inheritance any more than his primogeniture; * the King is but God's servant, and so cannot make void his Lord's choice; by God's Law the rights of primogeniture are the first-born's, (*Deut. 21. 15, 16, 17.*) nor can they be taken from him while he lives; even if he deserves to be deprived, it must be a judiciary proceeding that removes him.

2. If he wants an Heir, he cannot transfer the inheritance to whom he will without the peoples consent; they are Sons and not slaves, and therefore cannot be alienated at pleasure, *Joh. 8. 35. The servant abideth not in the house forever, but the Son abideth ever.* There are three degrees of Dominion. 1. Over goods inanimate or irrational; we may sell these, or destroy them, *Matt. 20. 15.* 2. *Dominium despoticum, vel herile*, the dominion over slaves, whom we may alienate, but not destroy, *Exo. 21. 20, 21.* 3. *Dominium Regale*, the dominion of Kings over their Subjects, which neither enables to destroy nor alienate, being instead of the paternal; the King can no more make another King over his subjects, than a Father can make another man the father of his children.

The sum is; a King may relinquish his power, but not invest a stranger with it with-

out the consent of the Heir, if he have any, or, if he have none, without the peoples accepting the person. Possession belongs to the King in being, Succession to the Heir in being, Election to the People, when destitute of both, and none can be deprived of their proper due without their own consent. Indeed (as was said before) when the people is both Sovereign, and Subjects, their submission includes all; as Sovereign they may resign, and then as a body without a head they may choose, and no Heir hath any injury; for the body of the people have no Heir.

CHAP. VII.

Qu. *Whether a long possession can make the Conqueror's title good?*

Ans. 'Tis absurd to think, that prescription can justify wrongs; for the rule of Law is, Non confirmatur tractu temporis, quod de jure non subsistit ab initio, *that no length of time makes that lawful, which was not so from the beginning.* 'Tis true,

1. In time all obstacles may be removed, and so the Usurper acquire a Title, the right Heirs being all extinguish'd, or relinquishing their right, and then the peoples submission doth it, but time it self gives no title.

2. Long possession may be, tho' not the ground, yet the proof of a title; but such a proof, as admits of divers exceptions; for if there be a right Heir, that claims, or else would claim, but that he wants either notice of his title, or power to make it good, here prescription proves nothing; but Possession may continue so long without any claim, or attempts to the contrary, that it may be (tho' no title, yet) a proof, that either the Possessor is the Heir, or that the People have chosen him upon the failing or cession of the Heir; and thus only do man's Laws approve prescription in private inheritances, not as if they preferred an Usurper before the right owner, who continues his claim and proves his title; and this was the case between *Israel* and the *Moabites*, *Judg. 11. 25, 26, 27.* which case duly weigh'd will easily solve the Objection.

F I N I S.

